

NOT FOR PUBLICATION

APR 23 2009

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ZHONGHUA LI,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-75091

Agency No. A096-059-379

MEMORANDUM^{*}On Petition for Review of an Order of the
Board of Immigration AppealsSubmitted April 13, 2009^{**}

Before: GRABER, GOULD, and BEA, Circuit Judges.

Zhonghua Li, a native and citizen of China, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen removal proceedings. We have jurisdiction pursuant to 8 U.S.C. § 1252. We

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

review the denial of a motion to reopen for abuse of discretion, *Lara-Torres v. Ashcroft*, 383 F.3d 968, 972 (9th Cir. 2004) and we deny in part, and dismiss in part the petition for review.

The BIA did not abuse its discretion in determining that some of the evidence in support of Li's motion to reopen was previously available. *See* 8 C.F.R. § 1003.2(c)(1). The BIA did not abuse its discretion when it nevertheless denied Li's motion because even with the new evidence, Li failed to establish prima facie eligibility for asylum, withholding of removal or protection under the Convention Against Torture. *See Mendez-Gutierrez v. Ashcroft*, 340 F.3d 865, 869-70 (9th Cir. 2003) (“[P]rima facie eligibility for the relief sought is a prerequisite for the granting of a motion to reopen.”).

To the extent Li challenges the BIA's May 17, 2006 order, dismissing his appeal, we lack jurisdiction to review his claim, because he did not timely petition for review of that order. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1258 (9th Cir. 1996).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.